

M-Files General Terms and Conditions (United States)

1. DEFINITIONS.

- 1.1. **"Affiliates"** means any corporation, partnership or other entity now existing or hereafter organized that directly or indirectly controls, is controlled by or under common control with a Party. For purposes of this definition "control" means the direct possession of a majority of the outstanding voting securities of an entity.
- 1.2. **"Agreement"** shall mean the binding and effective terms and conditions of these M-Files General Terms and Conditions and Order duly agreed between M-Files and Customer (including any terms and conditions incorporated therein by reference), and any amendments thereto. In the event of any conflict between these M-Files General Terms and Conditions and Order, these M-Files General Terms and Conditions shall control unless the Order explicitly states that it prevails (including any provisions in the "Specific Conditions" section of the Order).
- 1.3. **"Customer Data"** means information and data submitted by or on behalf of Customer to the Software Service, excluding any M-Files' information or Third-Party Products. If Customer Data is hosted by M-Files, it is Hosted Data, as defined in the Additional Software Terms attached hereto.
- 1.4. **"Data Processing Addendum"** or **"DPA"** means M-Files' data processing agreement which applies to the processing of Customer's Personal Data (as defined in the DPA) included in Customer Data by M-Files.
- 1.5. **"Deliverables"** means any work product, deliverables, programs, interfaces, modifications, configurations, reports, documentation or other material delivered to Customer by M-Files in the performance of Implementation Services.
- 1.6. **"Documentation"** means any manual and other documentation regarding the Software Service made generally available by M-Files to its customers, as maybe updated from time to time.
- 1.7. **"Effective Date"** shall mean the date defined in the Agreement or, if such date is not defined, then the last date of the signatures or electronic acceptance of the Agreement.
- 1.8. **"Malicious Code"** means viruses, worms, time bombs, Trojan horses and other malicious code, files, scripts, agents, or programs.
- 1.9. **"Order"** means the order placed by Customer or its Affiliate subject to the terms and conditions of the Agreement, that further describes the purchased Services. If Customer is ordering Implementation Services, an Order may be a SOW.
- 1.10. **"Implementation Services"** means any consulting, implementation, configuration, training, or other professional services that may be provided by M-Files to Customer.
- 1.11. **"Intellectual Property Rights"** shall mean (i) patents, inventions, designs, copyright and related rights, database rights, trademarks and related goodwill, trade names (whether registered or unregistered) and rights to apply for registration; (ii) proprietary rights in domain names; (iii) knowhow; (iv) applications, extensions and renewals in relation to any of these rights; and (v) all other rights of a similar nature or having an equivalent effect anywhere in the world.
- 1.12. **"Party/Parties"** shall mean the parties to the Agreement, individually as the "Party" and together as the "Parties".
- 1.13. **"Product Support"** shall mean standard maintenance and support services offered to Customer as part of the Software Service and detailed in M-Files Product Support Policy located at <https://www.m-files.com/product-support-policy/> or at another location on the M-Files website.
- 1.14. **"Services"** means the specific Software Service(s), Implementation Services, and Deliverables that are provided to Customer under this Agreement and as ordered under the applicable Order.
- 1.15. **"Software"** shall mean M-Files computer program or programs specified in the Agreement and/or in an Order as part of the Subscription at the latest release available on the Effective Date or at the effective date of such Order, and any Updates which may be made available to and procured by Customer from time to time during the applicable Subscription Period.
- 1.16. **"Software Service"** shall mean the standard on-premises and/or cloud-based Software, licenses thereto and the Product Support that are ordered by Customer as part of Customer's Subscription under

the Agreement. The Software Service shall also include applicable Documentation and Customer's Subscription management capabilities.

- 1.17. **"Statement of Work"** or **"SOW"** shall mean a written specification of the Implementation Services Customer has ordered.
- 1.18. **"Subscription"** shall mean the combination of Software, Software Service and/or Product Support that Customer has ordered under the Agreement and/or applicable Orders. Subscription may also include Implementation Services if such services are agreed to be included into Customer's Subscription.
- 1.19. **"Subscription Period"** means the term of each subscription to the Services as specified in the applicable Order. The "Initial Subscription Period" means the first Subscription Period set forth in the first Order. "Renewal Subscription Period" shall mean any additional Subscription Period(s) following the Initial Subscription Period.
- 1.20. **"Third-Party Product"** means any third-party software, website, application, platform, program, or data source not provided or licensed by M-Files as part of the Services to Customer under this Agreement. For the avoidance of doubt, Third-Party Products may be provided by M-Files to Customer however such Third-Party Products are licensed under separate terms and conditions, not this Agreement.
- 1.21. **"Updates"** shall mean releases of the Software incorporating improvements, patches, error corrections and enhancements that are made available by M-Files to customers with an active Subscription. Updates do not include any software or services that are marketed and priced separately by M-Files, or which M-Files makes available to its customers with active Subscription with an additional charge.
- 1.22. **"Usage Data"** means anonymized or aggregated data, statistics, usage analytics and analysis derived from the Services and Customer's use thereof.
- 1.23. **"User"** shall mean, for example, officers, directors, employees, consultants, agents and independent contractors of Customer (where such consultants, agents and contractors are acting solely for the benefit of and on behalf of Customer and may not be involved in actions competing with M-Files) who access and use the Software Service using Customer's user IDs.

2. SERVICES.

- 2.1. **Software Service.** Subject to this Agreement, and in consideration for the payment of fees set forth on the applicable Order, M-Files hereby grants to Customer, solely during the Subscription Period, a limited, non-exclusive, non-sublicensable, non-transferable (except as set forth in Section 12.3 (Assignment)) license to install, access and use the Software Service solely for Customer's internal business purposes. This license is restricted to use by Customer and Customer's Users and (except for Affiliates subject to Section 2.4) does not include the right to use the Services on behalf of any third party. Customer is responsible for procuring and maintaining the network connections that connect Customer to the Software Service. Customer acknowledges and agrees that M-Files shall only provide Customer with the specific Services specified on the Order, and not any other products or services that M-Files may offer. Additional definitions, restrictions and limitations on use for specific Software Service(s) or components thereof are set forth in additional terms below.
- 2.2. **Implementation Services.** If Customer has purchased Implementation Services from M-Files, then such Implementation Services are provided under the terms of this Agreement, the applicable Order (including the applicable SOW, if any), and the terms set forth in the Additional Implementation Services Terms below.
- 2.3. **Service Levels.** M-Files will use commercially reasonable efforts to provide the Software Services in accordance with the Product Support Policy.
- 2.4. **Affiliates.** Subject to the terms of the Order and this Agreement, the Customer may make the Services available for use by its Affiliates provided that (a) all licensing restrictions are complied with by each Affiliate, and (b) such Affiliates are bound by obligations as protective of M-Files as this Agreement for the benefit of M-Files. Customer shall be liable for any breach of the terms and conditions of this Agreement by any of its Affiliates.

3. OBLIGATIONS.

- 3.1. **Users.** Customer is responsible for all activities conducted, or directions or instructions issued, by Customer or under Customer's User ID's and for Customer's Users' compliance with this Agreement.

Customer is responsible for maintaining the confidentiality of User's passwords and account login information. Customer shall immediately notify M-Files of any unauthorized use of Customer's or any User's password or account or any other breach of security of which Customer is aware or suspects. Customer is responsible for ensuring all Users access and use the Services solely for Customer's benefit in accordance with this Agreement and not for any other purpose or use. Customer shall be liable for any breach of this Agreement by any of Users.

3.2. Restrictions on Use. Unauthorized use, resale or commercial exploitation of the Services in any way is expressly prohibited. Customer shall not (and shall not authorize any User or third party to): (i) modify, alter, translate, reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form, underlying user interface techniques or algorithms, or structure of the Services; or (ii) access or use the Services in order to build a competitive product or service or copy any ideas, features, functions or graphics of the Services. Except as expressly permitted in this Agreement, Customer shall not copy, license, sell, transfer, make available, lease, loan, time-share, distribute, or assign this license to access and use the Services (or any component hereof) to any third party. Customer and its Users shall not remove, alter, or obscure any trademark, copyright or proprietary label or notice accompanying or incorporated in the Services.

3.3. Customer Data.

3.3.1. Customer is responsible for the accuracy, integrity, legality and quality of Customer Data. Customer represents and warrants that: (i) Customer either owns fully and outright or otherwise possesses and has obtained (and paid for) all rights, approvals, licenses, consents, clearances, releases, and permissions as are necessary to provide Customer Data for use in connection with the Services; and (ii) Customer shall comply with all laws, ordinances, codes, regulations, rules, policies, regulations and procedures and the requirements of any other public or private authority in the provision of Customer Data hereunder.

3.3.2. Neither Customer nor Customer's Users shall use the Services to: (a) send, upload or otherwise transmit any Customer Data that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (b) upload or otherwise transmit, display or distribute any of Customer Data that infringes any Intellectual Property Rights; (c) upload or otherwise transmit any material that contains Malicious Code; (d) interfere with or disrupt the Services or networks connected to the Services; or (e) violate any applicable law or regulation.

3.3.3. Except for the license rights granted in this Agreement, as between Customer and M-Files, Customer retains ownership of all right, title and interest in and to all Customer Data. Customer hereby grants to M-Files a worldwide, non-exclusive, royalty-free right and license to collect, access, use, process and transmit Customer Data in order for M-Files (and its Affiliates, subcontractors, and service providers) to provide the Services and perform and fulfill M-Files' rights and obligations under this Agreement. Customer acknowledges that Customer Data may be processed, and administrative functions of the Services may be provided from locations outside of its country.

3.3.4. Customer is responsible for the correctness and completeness of any programs, files, tools, systems, data, or other materials provided by or on behalf of Customer to M-Files for use in the provision of the Services. Customer shall be responsible for M-Files having the right to use such materials for the purpose of performing its obligations under the Agreement.

3.4. Customer Data License. Customer hereby grants to M-Files a royalty-free, non-exclusive, worldwide right and license to host, access, copy, transmit, display, use, and store Customer Data in order to perform the Services. This license includes right to run Customer Data through M-Files' software and artificial intelligence models in order to provide the Services and to test, validate, and improve the performance of the artificial intelligence models and the Services for Customer. Customer acknowledges that when Customer Data is run through the software and artificial intelligence models, such Customer Data teaches, trains, and improves the software, artificial intelligence models, and Services to Customer, and any such learning cannot be "unlearned".

3.5. Usage Data. Customer acknowledges and agree that during the term of this Agreement and thereafter, M-Files may collect, analyze, copy, display and use Usage Data for the purposes of providing, operating, analyzing, and improving the Services and other M-Files products and services. M-Files may disclose Usage Data to its partners, customers, and on its public facing website for the purposes of

benchmarking and online marketing, provided however M-Files will not disclose any Usage Data unless it is in an aggregated and anonymized format that would not permit a third party to identify the data as associated with Customer or any individual.

3.6. No Circumvention. Customer acknowledges and agrees that Customer and its Users are not allowed to remove or circumvent any digital rights management mechanism, and Customer may not use the Subscription Service or any part thereof in conjunction with, or with the assistance of, any codes, keys, mechanisms, or hardware or software components that are meant to circumvent the protection and that are supplied to Customer by someone other than M-Files or one of its authorized distributors.

3.7. Suspension. M-Files shall have the right to suspend Customer's or any User's access to the Services if Customer's or User's actions pose a material security risk to or may otherwise materially damage or harm the Services or the underlying infrastructure, or if Customer or User burdens or uses the Services for a purpose not permitted by the Agreement, applicable law or administrative order or in such a manner that jeopardize the provision of the Services to other customers. Where feasible, M-Files will use commercially reasonable efforts, taking into consideration the circumstances, to provide Customer with prior written notice of any such suspension. M-Files shall remove the suspension once the issue has been remedied. M-Files has the right, but no obligation, to remove or require Customer to remove all Customer Data that is found to be in violation of the Agreement or applicable law or that is harmful or malicious to the Services.

3.8. Responsibilities. Customer acknowledges that M-Files' performance of its responsibilities under the Agreement is dependent on Customer's timely performance of its obligations and Customer shall fulfil its obligations in accordance with the Agreement including without limitation timely decision making.

4. FEES.

4.1. Fees. Customer agrees to pay M-Files all fees set forth in the applicable Order ("Fees") in accordance with this Agreement and the Order. Except as otherwise specifically provided in this Agreement, all Fees paid and payable to M-Files hereunder are non-cancelable and non-refundable. All amounts payable under this Agreement are in United States dollars, and Customer will pay all such amounts in United States dollars. M-Files shall be entitled to separately charge for services, work or deliverables that are not within the scope of the agreed upon Order or SoW and which Customer has requested in writing.

4.2. Failure to Pay. If any undisputed fee or charge owed by Customer is more than thirty (30) days past due, in addition to any other rights or remedies it may have under this Agreement or by matter of law, (i) M-Files reserves the right to suspend the Services upon ten (10) days written notice (email is acceptable), until such undisputed amounts are paid in full; and (ii) M-Files will have the right to charge interest at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law until Customer pays all undisputed amounts due. Customer will continue to incur and owe all applicable fees irrespective of any such suspension. No suspension shall occur if payment is made in full within the ten (10) days' notice period. If M-Files is forced to commence any collection or legal action relating to Customer's unpaid fees, then M-Files is entitled to recover its reasonable attorneys' fees and other direct costs arising in connection with any collection actions or legal proceedings.

4.3. Set-off. Customer shall have no right to set-off, deduct from or reduce payments owed under any Order in respect of any claim against or obligation of M-Files whatsoever, except those that are undisputed or have been legally established.

5. CONFIDENTIALITY

5.1. Each Party (a "Recipient") will regard any information provided to it by the other Party, or its Affiliates (a "Discloser") and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the Discloser's business and the industry in which it operates, is of a confidential or proprietary nature. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the Discloser, without any obligation of confidentiality; (ii) becomes known to the Recipient directly or indirectly from a source other than one having an obligation of confidentiality to the Discloser; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the Recipient without use of the Discloser's Confidential Information.

5.2. Recipient shall use the same degree of care that it uses to protect its own confidential information of like kind (but in no event using less than a reasonable standard of care) to not disclose or use any Confidential Information of the Discloser except as reasonably necessary to perform Recipient's obligations or exercise Recipient's rights pursuant to this Agreement or with the Discloser's prior written permission. Recipient may disclose the Discloser's Confidential Information on a need-to-know basis to its Affiliates, and its and their employees, directors, contractors, subcontractors, advisors, auditors, and service providers who are bound by confidentiality obligations at least as restrictive as those in this section. To the extent required by applicable law, Recipient's disclosure of Discloser's Confidential Information shall not be considered a breach of this Agreement provided that Recipient promptly provides Discloser with prior notice of such disclosure (to the extent legally permitted) and reasonable assistance, at Discloser's cost, if Discloser wishes to contest the disclosure. Discloser shall have the right to seek injunctive relief to enjoin any breach or threatened breach of this section, it being acknowledged by the Parties that other remedies may be inadequate.

5.3. The rights and responsibilities under this section shall survive the termination or expiration of the Agreement and shall remain in force for a period of five (5) years from the date of disclosure, provided, that the obligations and liabilities specified herein as they may relate to trade secrets or other intellectual property rights shall remain in effect and survive any termination hereof in accordance with the applicable law.

6. LIMITED WARRANTY

6.1. Software Service Warranty. M-Files warrants that during the Subscription Period the Software Service will conform, in all material respects, with the applicable Documentation. For any breach of the above warranty, M-Files will, at no additional cost to Customer, upon written notice from Customer, make commercially reasonable and technically feasible efforts to correct material errors that significantly affect the functionality of the Software Services to conform to the warranty. Customer will provide M-Files with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this section are Customer's sole remedies for breach of this warranty. This warranty will only apply if the Services have been utilized by Customer in accordance with the Agreement. M-Files makes no warranty regarding, and M-Files is not responsible for correcting errors caused by (a) Third Party Products; or (b) any Customer or third-party software or applications not provided by M-Files.

6.2. Implementation Services Warranty. The limited warranty for the Implementation Services provided hereunder (if any) is set forth in the Additional Implementation Services Terms.

6.3. Disclaimers. M-FILES DOES NOT REPRESENT THAT THE SERVICES WILL BE ERROR-FREE OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICES WILL BE CORRECTED. THE WARRANTIES STATED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY M-FILES. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. DATA PROCESSING. M-Files will provide the Services in accordance with privacy and data protection laws, to the extent applicable to M-Files as a processor. The Parties agree that the processing of Personal Data and/or personally identifiable information, as applicable, by M-Files shall take place under the terms and conditions of M-Files standard Data Processing Addendum ("DPA").

8. INTELLECTUAL PROPERTY. Customer acknowledges and agrees that as between M-Files and Customer, all right, title and interest in and to the (i) Services (and all M-Files' other products and services); (ii) all improvements, derivatives, enhancements, modifications, releases, configurations, methodologies, related technologies, and the like ("Modifications") to the Services created by any Party; and (iii) any and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights embodied in (i) and/or (ii) or associated therewith are and shall remain M-Files' or M-Files' licensors' sole and exclusive property, and M-Files in no way conveys any right or interest in the Services or any Modifications other than a limited license to use the Services in accordance herewith. M-Files also retains ownership of all right, title and interest in and to all M-Files Confidential Information and all Usage Data.

9. LIMITATION OF LIABILITY.

9.1. EXCEPT AS SET FORTH IN SECTION 9.3 NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL, PUNITIVE OR SPECIAL LOSS OR DAMAGE SUCH AS, WITHOUT LIMITATION, ANY LOSS OF PRODUCTION, LOSS OF DATA, LOSS OF PROFITS OR OF CONTRACTS, LOSS OF BUSINESS OR OF REVENUES, LOSS OF OPERATION TIME, LOSS OF GOODWILL OR REPUTATION DUE TO ANY CAUSE AND THE RESULTING DAMAGES AND EXPENSES INCURRED, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2. EXCEPT AS SET FORTH IN SECTION 9.3, THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY UNDER AND IN RELATION TO THE AGREEMENT (INCLUDING SERVICE CREDITS, POSSIBLE LIQUIDATED DAMAGES AND OTHER SIMILAR CONTRACTUAL CREDITS AND PENALTIES) SHALL BE LIMITED TO AN AMOUNT EQUIVALENT TO FEES ACTUALLY PAID TO M-FILES BY CUSTOMER UNDER THE AGREEMENT FOR THE TWELVE (12) MONTHS PRIOR TO THE EVENT OUT OF WHICH THE LIABILITY AROSE. "EVENT" MEANS ANY SINGLE EVENT OR THE FIRST OF A SERIES OF CONNECTED EVENTS GIVING RISE TO LIABILITY AND ARISING FROM THE SAME CAUSE.

9.3. EACH PARTY'S TOTAL AGGREGATE LIABILITY FOR: (A) BREACH OF CONFIDENTIALITY; (B) BREACH OF A PARTY'S OBLIGATIONS UNDER THE DPA; AND (C) A PARTY'S INDEMNIFICATION OBLIGATIONS SHALL NOT EXCEED TWO (2) TIMES THE AMOUNT OF FEES ACTUALLY PAID TO M-FILES BY CUSTOMER UNDER THE TERM OF THE AGREEMENT FOR THE TWELVE (12) MONTHS PRIOR TO THE EVENT OUT OF WHICH THE LIABILITY AROSE. THE LIMITATIONS OF LIABILITY IN THIS SECTION 9 SHALL NOT APPLY TO DAMAGES CAUSED BY WILLFUL OR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF THE OTHER PARTY. THE ABOVE LIMITATIONS OF LIABILITY IN NO WAY LIMITS CUSTOMER'S OBLIGATION TO PAY M-FILES ANY APPLICABLE FEES OR COSTS OWED UNDER THE AGREEMENT. NOTHING IN THE AGREEMENT SHALL OPERATE TO RESTRICT OR EXCLUDE ANY LIABILITY OF A PARTY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OF A PARTY OR FOR ANY OTHER RESTRICTION OR EXCLUSION NOT PERMITTED BY LAW.

9.4. All claims under the Agreement must be made within two (2) years from the event out of which the liability arose. The limitations of liability in this section apply to the fullest extent permitted by applicable law.

10. TERM & TERMINATION

10.1. Term. This Agreement will begin on the Effective Date and will continue until otherwise terminated in accordance with this Agreement.

10.2. Subscription Period.

10.2.1. Unless otherwise set forth in the applicable Order, the Initial Subscription Period begins on and is valid for three (3) years from the Effective Date. The Subscription will automatically renew for successive Renewal Subscription Periods, unless either Party terminates the Agreement or the current Subscription with a written notice to the other Party a) by Customer at least forty-five (45) days; or b) by M-Files at least hundred and eighty (180) days prior to the end of the Initial Subscription Period or any of the then current Renewal Subscription Period. Unless otherwise agreed, each Renewal Subscription Period shall be twelve (12) months. Customer shall be liable for any outstanding payments even if Customer decides to terminate the applicable Subscription after the Subscription have been automatically renewed. The termination of the Agreement shall also terminate the Subscription including any separate Orders relating thereto. Any renewal shall be subject to an annual fee increase.

10.2.2. Any additional orders by Customer during the Initial Subscription Period or any Renewal Subscription Period shall be combined with the then current Subscription Period.

10.3. Termination. Either Party may terminate this Agreement or any applicable Order (i) immediately in the event of a material breach of this Agreement or any such Order by the other Party that is not cured within thirty (30) days of written notice from the other Party; or (ii) immediately if the other Party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing. Termination of an Order will not terminate this Agreement. Termination of this Agreement will however terminate all outstanding Orders.

10.4. Effect of Termination. Upon any termination or expiration of this Agreement or any applicable Order, M-Files will no longer provide the

applicable Services to Customer, and Customer will stop using the Services. Customer will pay M-Files for all fees that had accrued prior to the termination date, provided that if the Agreement is terminated by Customer due to material breach of M-Files, then Customer shall be entitled to a refund for any prepaid unused fees for the remainder of the Subscription Period after the effective date of termination. All rights and obligations of the Parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement and each Order.

10.5. Return of Confidential Information. Except for Customer Data which shall be subject to Section 10.6 below, upon termination or expiration of the Agreement, each Party shall promptly return or destroy all Confidential Information of the other Party in its possession. The obligation to return or destroy shall not apply to Confidential Information which (i) is subject to automatic back-up or disaster recovery procedures, provided that such Confidential Information shall continue to be treated as Confidential Information as set out in the Agreement; or (ii) needs to be restored in order to comply with mandatory law or related to legal proceedings.

10.6. Data Deletion. During the Subscription Period and for thirty (30) days thereafter (the "Retrieval Period"), Customer may request a backup copy of the Hosted Data (defined in the Additional Software Service Terms), which M-Files will make available for Customer within thirty (30) days from Customer's written request on a medium or system to be determined by M-Files. Any services required to provide such backup copy to Customer will be provided as Implementation Services on time and material basis and invoiced, if not otherwise agreed, in accordance with M-Files' then current price list. After the Retrieval Period, M-Files will have no further obligation to store and/or make available Hosted Data and shall have the right to delete the same. Except as specified in this section, Customer will no longer have access to Hosted Data after termination of the Agreement.

11. INDEMNIFICATION

11.1. M-Files Indemnification. M-Files will indemnify, defend and hold Customer harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by a third party against Customer alleging that the use of the Software Services and Deliverables as permitted hereunder infringes any United States Intellectual Property Right of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Software Services in violation of this Agreement or applicable law; (b) use of the Software Services or Deliverables after M-Files notifies Customer to discontinue use because of an infringement claim; (c) any claim relating to any Third-Party Products; (d) any claim relating to Customer Data; (e) modifications to the Software Services or Deliverables made by anyone other than M-Files (where the claim would not have arisen but for such modification); (f) the combination, operation, or use of the Software Services or Deliverables with software, materials, data or equipment which was not provided by M-Files, to the extent that Customer liability for such claim would have been avoided in the absence of such combination, operation, or use; or (g) compliance by M-Files with Customer custom requirements or specifications if and to the extent such compliance with Customer custom requirements or specifications resulted in the infringement. If the Software Services are held to infringe, M-Files will, at M-Files' own expense, in M-Files' sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Customer against such claim without cost to Customer; (b) to replace the Software Services with non-infringing services without material loss of functionality; or (c) if (a) and (b) are not commercially feasible, terminate this Agreement or the applicable Order and refund to Customer any prepaid unused fees paid to M-Files for the infringing Software Services. The rights and remedies granted to Customer under this Section 11.1 state M-Files' entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the Intellectual Property Rights of a third party, whether arising under statutory or common law or otherwise.

11.2. Customer Indemnification. Customer shall indemnify, defend, and hold M-Files harmless from and against any and all Losses resulting from a claim, suit, action, or proceeding brought by any third party against M-Files that arises out of or results from a claim alleging that (a) Customer Data, or any use thereof authorized under this Agreement; or (b) Third-Party Products provided by Customer, or any use thereof

infringes the Intellectual Property Rights or proprietary rights of any third party.

11.3. Procedure. The indemnified Party shall (i) promptly notify the indemnifying Party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying Party's obligation except to the extent it is prejudiced thereby; and (ii) allow the indemnifying Party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement, provided that the indemnifying Party shall not settle any claim without the indemnified Party's prior written consent (such consent not to be unreasonably withheld or delayed). The indemnified Party shall also provide the indemnifying Party with reasonable cooperation and assistance in defending such claim (at the indemnifying Party's cost).

12. GENERAL PROVISIONS

12.1. Entire Agreement. This Agreement, including all Attachments hereto and all Orders, contains the entire agreement between the Parties, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the Parties relating thereto and is binding upon the Parties and their permitted successors and assigns. Only a written amendment that refers to this Agreement or the applicable Order and that is signed by both Parties may amend this Agreement or such Order. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature. Any inconsistent or conflicting terms and conditions contained in any purchase order issued by Customer shall be of no force or effect, even if the purchase order is accepted by M-Files. In the event of any conflict between the terms of this Agreement and any Order, this Agreement shall control, unless such Order expressly states that it is to control. This Agreement shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference against the Party drafting this Agreement in construing or interpreting the provisions hereof.

12.2. Code of Conduct. M-Files is committed to follow the principles described in the M-Files Code of Conduct <https://www.m-files.com/about/code-of-conduct/> as valid from time to time.

12.3. Assignment. Neither Party may assign any of its rights or obligations hereunder without the other Party's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign the Agreement without the other Party's consent to its Affiliate or in connection with a corporate reorganization, consolidation, merger, acquisition or sale of all or substantially all of its assets, except in the event of assignment to a direct competitor of the other Party, the other Party may terminate the Agreement upon written notice to the assigning Party. Subject to the foregoing, the Agreement will bind and inure to the benefit of the Parties, their respective successors and permitted assigns. There are no third-party beneficiaries under this Agreement.

12.4. Contractors. M-Files may use its Affiliates, independent contractors or subcontractors to assist in the delivery of the Services or components thereof. M-Files shall be responsible for the performance of such contractors and their compliance with M-Files' obligations under this Agreement, except as otherwise specified in this Agreement.

12.5. Export. Customer shall not export, re-export, resell, ship or divert or cause to be exported, re-exported, resold, shipped or diverted, directly or indirectly, the Software Service or any part thereof under the Agreement. Customer acknowledges that the export of any Software is subject to export or import control and Customer agrees that any Software or the direct or indirect product thereof will not be exported or re-exported from a country of installation unless Customer obtains prior agreement in writing from M-Files and all necessary licenses as required by any applicable laws and regulations. Customer shall comply with applicable export laws and regulations. Unless provided for in a separate agreement, Customer shall not disclose any information to M-Files or store any information within the Software Service that requires an authorization to be exported unless the authorization is required solely for export to countries subject to trade sanctions.

12.6. Feedback. Customer acknowledges that any suggestions, comments, improvements, ideas, requests for Modifications or feedback provided to M-Files relating to the Services or any of M-Files' other services ("Feedback") are voluntarily provided by Customer, and Customer agrees that the Feedback may be used by M-Files without

compensation, accounting or attribution to Customer, and Customer hereby grants M-Files a transferable, sublicensable, worldwide, perpetual, irrevocable, royalty-free, fully paid up right and license to freely exploit and make available all Feedback.

12.7. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, USA without regard to its conflict of law provisions. Any dispute arising between the Parties will be settled in an action commenced and maintained in any court sitting in New York, New York. The Parties irrevocably consent and submit to the exclusive personal jurisdiction of such courts if there is any dispute between them and agree not to challenge or assert any defense to the jurisdiction of such courts. Each Party knowingly, voluntarily, and intentionally waives (to the extent permitted by applicable law) any right the Party may have to a trial by jury of any dispute arising under or relating to the Agreement.

12.8. **Relationship of the Parties.** Each Party is an independent contractor, and nothing in this Agreement shall be construed as a partnership or creating the relationships of employer and employee, or principal and agent, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

12.9. **Force Majeure.** "Force Majeure Event" means any failure by a Party to perform its obligations under the Agreement caused by an impediment beyond its reasonable control (including without limitations strike, fire, flood, governmental acts or unavailability of third-party infrastructure or energy sources), and the consequences of which could not reasonably have been avoided or overcome by such Party. Excluding any Customer payment obligations, non-performance by either Party shall be excused to the extent that performance is rendered impossible by a Force Majeure Event. A Force Majeure Event suffered by a subcontractor of a Party shall also discharge such a Party from liability if subcontracting from other source cannot be made without unreasonable costs or a significant loss of time. A Party shall notify the other Party in writing without undue delay of a Force Majeure Event and shall take commercially reasonable and diligent actions to remedy such Force Majeure Event.

12.10. **Certification and Audit.** Upon M-Files' prior written request and no more than once every twelve (12) months, Customer shall provide M-Files with a signed certification (i) verifying that the Software Service is being used pursuant to the provisions of the Agreement; and (ii) listing all respective locations where Customer uses the Software Service. M-Files may perform an audit, not more than once per twelve (12) month period, of Customer's compliance with the provisions of the Agreement. Any such audit shall be performed at M-Files' expense and shall occur during Customer's normal business hours. M-Files shall notify Customer, in writing, thirty (30) business days prior to such audit. Such audit shall not unreasonably interfere with Customer's business operations. Customer agrees to reasonably cooperate with M-Files in such audit.

12.11. **Notices.** All notices required by or related to the Agreement shall be given in writing to the contact persons in the Agreement or as updated by any Order and either (i) by being hand-delivered to the receiving Party; (ii) by being addressed by registered mail or delivered by recognized private carrier and addressed to the receiving Party at its address set forth in the main body of the Agreement; or (iii) by being

transmitted by electronic mail with receipt confirmed. However, any notices to Customer related to invoicing will be addressed to the relevant billing contact designated by Customer. A Party shall inform the other Party of any change of its address by giving a written notice hereunder to the other Party.

12.12. **No Third-Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a Party to any such person.

12.13. **Modifications.** M-Files may make modifications, changes, or improvements to the Services or particular components of the Services from time to time provided that such modifications do not materially degrade any functionality or features of the Services (unless such functionality is replaced with functionality that is substantially equivalent). M-Files shall make available to Customer information regarding material changes via email or through its website.

12.14. **Waiver and Severability.** Performance of any obligation required by a Party hereunder may be waived only by a written waiver signed by an authorized representative of the other Party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either Party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

12.15. **Insurance.** M-Files shall maintain at least the following minimum insurance requirements: (i) workers compensation insurance at statutory limits; (ii) commercial general liability insurance with a limit of not less than US\$1,000,000 per occurrence and in the aggregate; and (iii) technology/errors and omissions insurance with a limit of not less than US\$5,000,000 in the aggregate. M-Files shall provide a certificate of insurance upon Customer's written request.

12.16. **Publicity.** M-Files may use and display its relationship with Customer (including its logo) in its marketing and sales promotions activities in all M-Files' marketing channels, and in customer listings during the term of the Agreement provided that Customer may restrict or terminate such use upon written notice to M-Files at any time.

12.17. **United States Government Restricted Rights Legend.** The following provision applies only if Customer is a branch or agency of the United States Government or is purchasing the Software Service on behalf of the United States Government. The Software Service is comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and are provided to the Government for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 (JUN 1995) and 227.7202-3 (JUN 1995). Use, duplication, or disclosure of the Software and Documentation by the United States Government is subject to the restrictions set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR- 52-227.19, as applicable.

ADDITIONAL SOFTWARE SERVICE TERMS

These terms apply to Software Services in addition to the General Terms and Conditions above,

1. Additional Definitions.

1. **"Client Software"** shall mean Software files, documents, and other content that are offered to Customer by M-Files for purposes of running, use, and display of Software tools and the client interface on Customer's terminal devices but that are not defined as Per-Device Licensed Software or Server Software.
 2. **"Data Archive"** is a storage type for storing non-mutable records and other archive data for infrequent access.
 3. **"Hosted Data"** shall mean such Customer Data that is hosted by M-Files (or M-Files' third party hosted services provider) in order to provide Software Services to Customer.
 4. **"Master Server"** shall mean the hardware that operates as the main server on which Customer uses and runs the Server Software, and that Customer has designated as its primary Server Software. The Server Software on Customer's Master Server is the core for Customer's Software Service. Setting up a new Master Server is subject to authorization by M-Files to set up a new instance of the Software Service.
 5. **"Per-Device Licensed Software"** shall mean Software marked as per-device licensed software by M-Files.
 6. **"Platform Edition"** shall mean the edition for user licenses and which defines for example volume limits of the Subscription. The different editions are described at <https://www.m-files.com/products/platform-editions/> or at another location on the M-Files website.
 7. **Server Software** shall mean Software files, documents, and other content that are offered to Customer by M-Files for purposes of operating with said files and content on Customer's server hardware but that are not defined as Per-Device Licensed Software or Client Software.
2. **Use Cases.** The Software Service is designed to support typical information management use cases and is subject to certain usage restrictions as described in the Documentation and at <https://www.m-files.com/products/platform-editions/>. These use cases include document management, case management, and contract management. M-Files has the right to restrict the usage of the Software Service if the use results in Customer significantly exceeding the restrictions specified under the specified M-Files Platform Edition. Where feasible, M-Files will use commercially reasonable efforts, taking into consideration the circumstances, to provide Customer with prior written notice of any issues with such restrictions. M-Files shall remove the restriction once the issue has been remedied.
3. **Server Software:** Server Software shall be used on a single designated Master Server in Customer's Software Service during the Subscription Period. Customer may create backup servers and make copies of the Server Software solely for backup purposes. Customer may not use, run, load, or copy the Server Software that is installed on Customer backup server, other than to the extent technically necessary for an up-to-date backup. Customer shall not transfer Customer's license code from Customer's designated server to Customer's backup server.
4. **Replica Server Software:** If Customer has acquired a license to set up a replica server for Software Service, Customer may copy and run the necessary portions of the Server Software to a server that Customer has set up as a replica server in order to better manage Customer Data and to enable more effective decentralized data processing in Software Service.
5. **Per-Device Licensed Software:** If Customer acquired a license to install and use Per-Device Licensed Software, Customer may use the Per-Device Licensed Software on a single designated Customer device.
6. **Client Software:** Client Software shall be used in Customer's terminal devices.
7. **User Licenses.**
1. *Named User Licenses* shall be assigned to specific individuals and authorizes the named person to access and use the Software and the Software Service. Customer may not transfer the licenses but may reallocate them. For the purposes of the definition of Named User License only, "transfer" means either (a) an assignment or transfer of the Named User License to a third party not authorized by the Agreement to use the Named User License; or (b) the sharing of a single Named User License by one or more person.
 2. *A Concurrent User License* is a non-transferable authorization for the agreed maximum number of Users to access and use the Software and the Software Service. Only one User can use the license at a time.
 3. *Read-only Named User Licenses* shall be assigned to specific individuals and authorizes the named person to access and use the Software and the Software Service and make any technically necessary temporary copies of the Software, all for the sole purpose of viewing the content Customer has created. Customer may not transfer the licenses but may reallocate them. For the purposes of the definition of Read-only Named User License only, "transfer" means either (a) an assignment or transfer of the Read-only Named User License to a third party not authorized by the Agreement to use the Read-only Named User License; or (b) the sharing of a single Read-only Named User License by one or more person.
8. **Hosted Data.** Unless otherwise agreed in writing, M-Files will make daily backup copies of the Hosted Data and retain one restore point per day for the last seven (7) days. If Hosted Data is deleted, lost, altered or damaged by Customer using Customer's own user IDs or if Customer has otherwise by its own or its authorized action deleted, lost, altered or damaged Hosted Data, M-Files shall have the right to charge Customer for the work on the recovery of such Hosted Data on time and material basis in accordance with M-Files' then current price list.

ADDITIONAL IMPLEMENTATION SERVICES TERMS

These terms apply to Implementation Services in addition to the M-Files General Terms and Conditions above.

1. **Implementation Services.** M-Files will provide Implementation Services pursuant to Order(s) or SOW(s) executed by the Parties and referencing this Agreement. The Implementation Services are provided during normal local business hours of M-Files from Monday to Friday, excluding any national holidays. Unless otherwise expressly stated, time schedules, resources, work amounts, and other details for Implementation Services defined in this Agreement, an Order or SOW are estimates only.
2. **Staffing.** M-Files shall have sole discretion regarding staffing for the Implementation Services, including the assignment or reassignment of the personnel. M-Files will assign personnel of appropriate qualification and experience to perform and fulfil its obligations for Implementation Services. Each party shall appoint authorized representative(s) to be the other party's contact persons for matters related to agreed Implementation Services.
3. **Change Requests.** Either party may request a change to the Implementation Services, and for such purpose shall submit to the other party a written notice setting forth the requested change and the reason for such request. The Parties shall discuss the necessity, desirability and/or acceptability of such change request and agree in writing upon the change and any resulting changes in the time schedules, and other relevant parts of the agreed Implementation Services.
4. **Non-solicitation.** During the term of any Implementation Services engagement and for six (6) months thereafter, Customer agrees to the extent permitted by law that it will not, directly or indirectly, solicit for employment or employ any M-Files employee who performs or has performed essential tasks relating to any Implementation Services. In case of a breach of the non-solicitation restriction, M-Files has the right to request Customer to pay to M-Files by way of a penalty an amount corresponding to six (6) months' gross salary of the employee in question. The non-solicitation restriction shall not apply if the employment of the person in question has been terminated for a reason attributable to M-Files or if the recruitment or employment occurs in response to any public job advertisement.
5. **Deliverables.** Subject to the terms and conditions of the Agreement and due payment of all applicable fees and expenses, during the term of the Agreement only, M-Files hereby grants Customer a non-exclusive, non-transferable license to use any Deliverables developed by M-Files in the performance of Implementation Services, solely in conjunction with, and consistent in scope with, Customer's permitted use of the Software Service under this Agreement. Customer and its Affiliates may not sell or otherwise transfer the Deliverable to any third party. Training sessions may be recorded for Customer's internal purposes only. M-Files retains ownership of all information, software and other property owned by M-Files prior to this Agreement or which M-Files develops independently of this Agreement and all Deliverables received, compiled or developed by M-Files in the performance of this Agreement, including, but not limited to all configurations of the Software Service. All such information shall be treated as Confidential Information of M-Files. M-Files retains ownership of and may utilize and fully exploit any and all methods, computer software, know-how or techniques related to programming and processing of data, developed by M-Files while providing the Implementation Services and may (but is under no obligation to) incorporate the Deliverables in future releases of any of M-Files products and/or services.
6. **Implementation Services Warranty.** M-Files warrants that any Implementation Services shall be provided in a competent manner in accordance with any specifications set forth in the Order or SOW, in all material respects. M-Files further warrants that any Deliverables provided pursuant to any Implementation Services engagement shall comply, in all material respects, with the specifications set forth in the Order or SOW. If the Implementation Services are not performed as warranted or the Deliverables do not comply, then, upon Customer's written request, M-Files shall promptly re-perform, or cause to be re-performed, such Implementation Services, at no additional charge to Customer. Such warranties and other obligations shall only survive for ninety (90) days following the completion of the Implementation Services or the delivery of each applicable Deliverable, as the case may be. Such re-performance shall be Customer's exclusive remedy and M-Files' sole liability for any such non-performance.
7. **Customer's Obligations.** Customer will reasonably cooperate with M-Files, will provide M-Files such assistance as M-Files may reasonably request, and will fulfill Customer's responsibilities as set forth in this Agreement and the Order or SOW. If M-Files personnel are required to be present at Customer's location, Customer will provide adequate workspace. Customer shall be responsible for obtaining and paying for any releases, rights, licenses, clearances or permissions necessary to use any third-party materials which are the responsibility of Customer to provide in connection with any Implementation Services performed by M-Files under any Order or SOW. Customer agrees to provide M-Files reasonable access to Customer's computers and network as reasonably required to perform under any Order or SOW.
8. **Work Packages and Advisory Hours.** Implementation Services' work packages or advisory hours shall expire in twelve (12) months from the Effective Date.
9. **Expenses.** Customer is responsible for all travel, and related accommodations (such as out-of-pocket costs and expenses as well as daily allowances) that may be required or requested in connection with the provisions of any M-Files Implementation Services. M-Files is entitled to charge its prevailing rates for any agreed upon travel. Any travel arrangements shall be agreed upon in advance. Unless otherwise set forth in the applicable Order or SOW, expenses are billed monthly in arrears.
10. **Overtime.** Implementation Services that are performed and delivered outside defined business hours in the applied time zone will be invoiced by multiplying the hourly price with the rates set forth in the M-Files overtime hour rates for non-business hours (see chart below). If Customer has ordered Implementation Services as any work package, the used hours will be multiplied by the applicable rate and deducted from Customer's Implementation Services work package. Implementation Services outside defined business hours are performed only if necessary and mutually agreed upon in writing (email is sufficient).

Non-business hours	Rate
Mon-Fri 6 pm – 9 pm	1.5 x
Mon-Fri, 6 am – 8 am	1.5 x
Mon-Fri 9 pm – 6 am	2.0 x
Saturday 8 am – 9 pm	2.0 x
Saturday 9 pm – 8 am	2.5 x
Sunday and national holiday 8 am – 9 pm	2.5 x
Sunday and national holiday 9 pm – 8 am	3.0 x